

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of Sections 3(n) and 332 of the Communications Act)	GN Docket No. 93-252
)	
Regulatory Treatment of Mobile Services)	
)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band)	PR Docket No. 93-144 ✓
)	
Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool)	PR Docket No. 89-553
)	

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Memorandum Opinion and Order on Reconsideration

Adopted: March 17, 2000

Released: April 7, 2000

By the Commission:

I. INTRODUCTION

1. The Commission has before it petitions for reconsideration of the *CMRS Third Report and Order*.¹ In the *CMRS Third Report and Order*, the Commission continued its initial implementation of Sections 3(n) and 332 of the Communications Act of 1934,² as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993.³ Pursuant to Congressional mandate, the Commission adopted changes to its technical, operational, and licensing rules for common carrier and private mobile radio services that were necessary to implement the statute and to establish regulatory symmetry among similar mobile services. The regulatory framework established in the *CMRS Third Report and Order* also

¹Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988 (1994) (*CMRS Third Report and Order*).

²Communications Act of 1934, 47 U.S.C. §§ 151-713 ("Communications Act" or "Act").

³Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993) (1993 Budget Act).

set the stage for the future evolution of mobile services. The *CMRS Third Report and Order* was an important step in our continuing effort to enhance competition among mobile services providers, promote the development of new and technologically innovative service offerings, and ensure that consumer demand, not regulatory decree, dictates the course of the mobile services marketplace. With this Memorandum Opinion and Order, we address all remaining relevant issues presented to the Commission by petitioners.

II. BACKGROUND

2. In the *CMRS Second Report and Order*, the Commission initiated the process of implementing the 1993 Budget Act amendments to Sections 3(n) and 332 of the Act by interpreting the statutory definitions of commercial mobile service (CMRS) and private mobile service (PMRS).⁴ The Commission determined that Congress intended the CMRS classification to apply to all mobile services that are offered for profit and that provide interconnected service to the public or to such classes of users as to be effectively available to a substantial portion of the public, as well as to all services that are the functional equivalent of such services. Applying this definition to existing mobile services, the Commission found that all common carrier mobile licensees and certain private radio licensees in the Specialized Mobile Radio (SMR), Business Radio, 220-222 MHz, and private paging services, regulated under Part 90 of the Commission's Rules, fell within the CMRS classification.⁵

3. In the *CMRS Third Report and Order*, the Commission took four additional steps to implement both the broad goals of the 1993 Budget Act and the more narrowly focused requirements generated by the one-year deadline established by Congress for implementing the 1993 Budget Act.⁶ First, the Commission determined which reclassified private services were "substantially similar" to existing common carrier mobile services in order to implement the 1993 Budget Act requirement that such services be subject to "comparable" regulation. Second, the Commission revised Part 90 and Part 22 technical and operational rules governing those services to ensure that the rules are, indeed, "comparable." Third, the Commission adopted the 45 MHz CMRS spectrum cap, which limited the total amount of combined broadband personal communications services (PCS), cellular, and SMR spectrum in which an entity may have an attributable interest in any geographic area.⁷ Fourth, to carry out 1993

⁴Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*), Erratum, 9 FCC Rcd 2156 (1994). In place of the statutory terminology, the Commission uses the terms "commercial mobile radio service" and "private mobile radio service," respectively.

⁵*Id.* at 1448-58 (paras. 82-109).

⁶The 1993 Budget Act established a one-year period from the date of enactment, *i.e.*, until August 9, 1994, for the Commission to make such changes to its existing service rules as were necessary to implement the amendments to Section 332 and to provide for an orderly transition. 1993 Budget Act, § 6002(d)(3). The statute also provided that for three years from the date of enactment, *i.e.*, until August 9, 1996, existing private land mobile licensees that were reclassified as CMRS providers would continue to be regulated for most purposes as private service providers. *Id.*, § 6002(c)(2)(B).

⁷We recently amended the spectrum cap to permit entities to hold attributable interests in up to 55 MHz of covered spectrum in rural areas, and stated that we will consider requests for waiver of the spectrum cap to the extent that a carrier can credibly demonstrate that in a particular area the spectrum cap is having an adverse effect on its ability to provide advanced services. See 1998 Biennial Regulatory Review - Spectrum Aggregation Limits for Wireless

Budget Act requirements concerning the licensing of CMRS services, the Commission adopted uniform rules for licensing CMRS services, including reclassified services. The Commission also modified the licensing rules for Part 22 CMRS and Part 90 commercial services, where appropriate. These modifications included the adoption of filing windows for the filing of competing initial applications and competitive bidding procedures to select from among mutually exclusive applications.

4. In response to the *CMRS Third Report and Order*, fifteen parties filed petitions for reconsideration.⁸ Eight parties filed comments/oppositions to the petitions for reconsideration and four parties filed reply comments.⁹ We have previously dismissed as moot the petition for reconsideration filed by SMR WON to the extent it addresses spectrum cap issues.¹⁰ In this Memorandum Opinion and Order, we consider the remaining issues raised in the petitions for reconsideration.

III. DISCUSSION

5. The primary goal of the *CMRS Third Report and Order* was to establish the regulatory framework for implementing the mandate of the Budget Act to treat “substantially similar” CMRS providers in a similar regulatory manner. In the five years since the release of the *CMRS Third Report and Order*, this task has been accomplished through the revision of scores of Commission rule sections in several Commission proceedings. In fact, the majority of the issues raised in the petitions for reconsideration have been addressed in or rendered moot by Commission action taken in the *800 MHz Report and Order*,¹¹ the *ULS Report and Order*,¹² and other Commission orders subsequent to the release

Telecommunications Carriers, WT Docket No. 98-205, *Report and Order*, FCC 99-244 (released September 22, 1999) (*Spectrum Cap Order*).

⁸ Petitions were filed by AirTouch Communications, Inc. / US West New Vector Group, Inc. (AirTouch/US West), American Mobile Telecommunications Associations, Inc. (AMTA), Chadmoore Communications, Inc. (Chadmoore), E.F. Johnson Company (E.F. Johnson), G & M Wireless Communications, Inc. (G&M Wireless), Geotek Communications, Inc. (Geotek), Industrial Telecommunications Association, Inc. (ITA), Massachusetts–Connecticut Mobile Telephone Company / Mobile Radio Communications, Inc. / Radiofone, Inc. (MA-CT/Radiofone), McCaw Cellular Communications, Inc. (McCaw), Paging Network, Inc. (PageNet), Personal Communications Industry Association (PCIA), ProNet, Inc. (ProNet), RAM Mobile Data USA Limited Partnership (RAM Mobile), SMR WON and SunCom Mobile & Data, Inc. (SunCom).

⁹ Comments and oppositions were filed by AirTouch Paging, American Personal Communications, Linear Modulation Technology Limited, McCaw, Motorola, Nextel Communications, Inc., Pacific Bell Mobile Services and PCIA. Reply comments were filed by AirTouch Paging, AMTA, E.F. Johnson and PCIA. We have considered all of the arguments raised in the comments, oppositions, and reply comments to the extent that they remain relevant, whether or not they are specifically cited in this Memorandum Opinion and Order.

¹⁰ *Spectrum Cap Order* at 59, ¶ 140.

¹¹ Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Implementation of Sections 3(n) and 322 of the Communications Act – Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *First Report and Order*, *Eighth Report and Order* and *Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 1463 (1995) (*800 MHz Report and Order*).

¹² Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket No.

of the *CMRS Third Report and Order*. Other issues raised in the petitions are being considered in ongoing Commission proceedings. For these reasons, with one exception, we dismiss or deny all of the pending petitions for reconsideration. We do, however, amend Sections 90.425 and 90.647 of our rules to clarify the station identification requirements applicable to CMRS providers licensed under Part 90.

A. Comparison of “Substantially Similar” Services

6. In the *CMRS Third Report and Order*, the Commission concluded that all commercial mobile radio services compete with one another, or have the potential to compete with one another, to meet the needs of consumers while on the move.¹³ Thus, the Commission endeavored to conform the rules governing these services to the extent reasonable.

7. Most petitioners support the Congressionally-mandated concept of regulatory symmetry, including the establishment of comparable regulatory schemes for those services that are deemed to be “substantially similar.”¹⁴ However, some petitioners question whether all of the Commission’s decisions regarding the regulatory changes needed to implement the Budget Act were actually mandated by the statute.¹⁵ In particular, AMTA and other commenters argue that treating all commercial mobile service providers as substantially similar may have a significant impact on traditional “local” SMR licensees.¹⁶ AMTA therefore argues that CMRS should be defined so as not to include these SMR service providers.¹⁷

8. In the *CMRS Second Report and Order*, the Commission found that SMR providers that offer interconnected services fall within the statutory definition of CMRS.¹⁸ This finding has subsequently been reaffirmed in other orders.¹⁹ AMTA makes no new arguments that have not already been addressed in these orders, and we therefore reject its contention that interconnected local SMR licensees should not be classified as CMRS.

B. Mutually Exclusive Applications; Competitive Bidding

1. 800 MHz and 900 MHz SMR Competitive Bidding

98-20, *Report and Order*, 13 FCC Rcd. 21,027 (1998) (*ULS Report and Order*), *recon.*, 14 FCC Rcd. 9305 (1999).

¹³ *CMRS Third Report and Order*, 9 FCC Rcd. at 8012, ¶ 43.

¹⁴ See, e.g., petitions of AMTA, McCaw and PCIA.

¹⁵ AMTA Petition at 4.

¹⁶ AMTA Petition at 4; see also E. F. Johnson Petition at 2.

¹⁷ AMTA Petition at 4.

¹⁸ *CMRS Second Report and Order*, 9 FCC Rcd. at 1450-51, ¶¶ 88-93.

¹⁹ E.g., In the Matter of Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, *Third Report and Order*, 17 Communications Reg. (P&F) 470 (1999).

9. The arguments of several petitioners²⁰ against the auctioning of 800 MHz SMR spectrum have been rendered moot by release of the *800 MHz Report and Order*, which fully addressed these issues, and the subsequent auction of 800 MHz SMR spectrum commencing on October 28, 1997 and ending December 8, 1997.²¹ Similarly, the arguments in support of the “expeditious completion of the 900 MHz wide area licensing process”²² have been rendered moot by release of the *900 MHz Order*²³ and *900 MHz Reconsideration Order*²⁴ and the subsequent auction of 900 MHz SMR spectrum.

2. Geographic Area Licensing for Paging Services

10. In its petition, ProNet urges the Commission to issue a Further Notice of Proposed Rulemaking proposing rules to license Part 22 and Part 90 paging carriers on a market-defined service area basis as determined by the Commission.²⁵ ProNet’s argument has been rendered moot by the release of the *Paging Second Report and Order*,²⁶ which established geographic area licensing procedures for all exclusive use channels in the paging services.²⁷

3. Filing Window for Mutually Exclusive Applications

11. In the *CMRS Third Report and Order*, the Commission adopted rule changes that generally resulted in using 30-day notice and cut-off procedures and competitive bidding to select among mutually exclusive initial CMRS applications in Part 22 services (except for Phase I cellular unserved area applications), 900 MHz SMR service, and 800 MHz SMR service. G&M and McCaw argue that use of a 30-day notice and cut-off procedure for Phase II cellular unserved area applications will increase the likelihood that speculative applications will be filed, and they therefore urge the Commission to return to the first-come, first-served procedures that were in effect before the *CMRS Third Report and Order*. G&M and McCaw raise no new arguments that were not addressed in the *CMRS Third Report and Order*.

²⁰ See petitions of AMTA, Chadmoore, E.F. Johnson, RAM and SMR WON.

²¹ See Auction of 800 MHz SMR Upper 10 MHz Band ; Minimum Opening Bids or Reserve Prices, *Order*, DA 97-2147 (released October 6, 1997) and *800 MHz SMR Auction Closes, Public Notice*, DA 97-2583 (released December 9, 1997).

²² AMTA Petition at 5.

²³ Amendment of Parts 2 and 90 of the Commission’s Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 89-553, PP Docket No. 93-253, GN Docket No. 93-252, 10 FCC Rcd 6884 (1995) (*900 MHz Order*).

²⁴ Amendment of Parts 2 and 90 of the Commission’s Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Order on Reconsideration and Seventh Report and Order*, PR Docket No. 89-553, PP Docket No. 93-253, GN Docket No. 93-252, 11 FCC Rcd 2639 (1995) (*900 MHz Reconsideration Order*).

²⁵ ProNet Petition at 1-2.

²⁶ Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 2732 (1997) (*Paging Second Report and Order*), *recon.*, 14 FCC Rcd 10030 (1999).

²⁷ *Id.* Shared Part 90 paging channels are not subject to geographic area licensing or competitive bidding.

Moreover, our experience over the past five years supports our earlier conclusion that “[u]nlike random selection procedures, which tend to increase the likelihood of speculative or frivolous applications because all competitors have an equal opportunity to receive an authorization, the use of competitive bidding procedures should not have the same result,”²⁸ even if a 30-day notice and cut-off period is used. In addition, we reject the argument of MA-CT Radiofone that the 30-day cut-off period is too short, especially in light of our recent streamlining of procedures under the Universal Licensing System (ULS). We therefore retain the cut-off periods adopted in the *CMRS Third Report and Order*.

C. Application Forms and Procedures

12. In the *CMRS Third Report and Order*, the Commission adopted a single unified application form (Form 600) for all CMRS and PMRS applicants in terrestrial wireless services. On reconsideration, AirTouch and US West object to various information requirements on Form 600, and ITA argues that insufficient consideration was given to the regulatory burden imposed by Form 600 on PMRS operators. Since the petitions were filed, the Commission has replaced Form 600 with Form 601 as part of its deployment of the Universal Licensing System (ULS). Indeed, the new ULS rules, forms, and processes have eliminated many unnecessary information requirements and regulatory burdens that characterized the old system. Therefore, petitioners’ arguments are moot.

D. Station Identification

13. In the *CMRS Third Report and Order*, we streamlined and conformed our rules concerning transmission of station identification information by CMRS licensees.²⁹ We concluded that CMRS licensees operating on an exclusive basis in Commission-defined service areas should generally not be required to transmit station identification information. In the case of all other CMRS licensees, whether licensed exclusively on a site-specific basis or licensed on shared channels, we continued to require transmission of station identification information on a regular basis in accordance with the standards set forth in our rules. AMTA requests that the Commission reconsider or clarify the rules as they apply to CMRS licensees in Part 90 services.³⁰ Specifically, AMTA contends that it is unclear whether the Commission intended for Part 90 CMRS licensees (other than those specifically exempted from station identification requirements) to continue to comply with the specific transmission requirements of Sections 90.425(a) through 90.425(d) that apply generally to Part 90 services, or whether they should “station identify” as provided for in the new Section 90.425(e) applicable to CMRS.

14. We concur with AMTA that Section 90.425 should be clarified to properly reflect our decision in the *CMRS Third Report and Order*. For example, Section 90.425(a) generally requires Part 90 licensees to transmit station identification once every 15 minutes, while Section 90.425(e) requires CMRS licensees to transmit only once an hour.³¹ We will therefore amend the rule to clarify that CMRS

²⁸ *CMRS Third Report and Order*, 9 FCC Rcd at 8138, ¶ 334.

²⁹ *Id.* at 8092-93, ¶¶ 216-219. See 47 CFR §§ 22.313, 90.425.

³⁰ AMTA Petition at 15-16.

³¹ 47 CFR §§ 90.425(a), (e)(2). The requirement that Part 90 CMRS licensees transmit once an hour is consistent with the equivalent rule for Part 22 CMRS licensees. See 47 CFR § 22.313(b).

licensees in Part 90 services that are required to provide station identification information are subject to the requirements of Section 90.425(e), not Sections 90.425(a) through (d). Consistent with this change, we also amend Section 90.647 to clarify that CMRS providers operating trunked systems are also subject only to the streamlined requirements of Section 90.425(e).³²

E. Amendment of Applications and License Modification

1. Distance Threshold for New Applications

15. In the case of Part 22 and Part 90 services that are licensed on a station-by-station basis, the *CMRS Third Report and Order* adopted the same definition of initial application that the Commission adopted for 931 MHz paging services in Part 22. Specifically, applications proposing the location of a facility more than 2 kilometers from any existing facility licensed to the applicant and operating on the same frequency are considered “initial applications,” not modifications. MA-CT Radiofone contends that the *CMRS Third Report and Order* rule changes create unnecessary burdens for Part 22 and Part 90 licensees, including paging licensees, which will hinder their ability to provide service to the public. We find that the Petitioners’ argument has been rendered moot by the Commission’s freeze on accepting both new site-by-site initial applications and major modifications in the paging services.³³

2. Developmental Applications as Minor Modifications

16. AirTouch and US West request clarification whether developmental applications not filed pursuant to then new rule Section 22.409 will be deemed “minor.” Petitioners also seek modification of Form 600, which classified all such authorizations as “major.” Since the petitions were filed, we have further addressed the identification of changes as major or minor in the ULS proceeding.³⁴ Section 1.929(k) of the Commission’s rules as amended by the ULS proceeding provides that “[a]ny change not specifically listed . . . as major is considered minor.”³⁵ Nothing in petitioners’ arguments persuades us to revisit our categorization of major and minor modifications in the *ULS Report and Order*.

F. Conditional and Special Temporary Authority (Pre-Grant Authority)

17. Section 309(f) of the Act allows the Commission in extraordinary circumstances to grant a license applicant special temporary authority (STA) to operate a station while its application for

³² We also amend the reference in Section 90.425(e) to “MTA-based” SMR licensees to include 800 MHz geographic licensees, who are licensed on an Economic Area (EA) basis. The specific rule amendments that we adopt are set forth in the Appendix.

³³ See Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Notice of Proposed Rulemaking*, 11 FCC Rcd. 3108, 3136-37, ¶¶ 139-143 (1996) (*Paging Notice*).

³⁴ *ULS Report and Order*, 13 FCC Rcd. at 21055-21061, ¶¶ 58-73.

³⁵ 47 CFR § 1.929(k). Minor changes include but are not limited to 1) any pro forma assignment or transfer of control; 2) any name change not involving change in ownership or control of license; and 3) any address and/or telephone number changes.

permanent operating authority is pending.³⁶ PageNet argues that extraordinary circumstances exist under which the Commission should provide for pre-grant conditional operation for paging applicants generally under Section 309(f).³⁷ Specifically, PageNet argues that it is an extraordinary circumstance that the Commission would license some CMRS carriers on a wide-area geographic basis, while not providing the same opportunity to paging carriers.³⁸ PageNet contends that unless paging carriers are provided the opportunity to rapidly bring wide-area service to the public, parity cannot exist between paging carriers and other CMRS carriers. We believe the Commission's freeze on the acceptance of new site-by-site paging applications,³⁹ the conclusion of the geographic-area paging auctions for the upper frequency bands,⁴⁰ and the upcoming geographic-area auctions for the remaining paging frequencies have rendered PageNet's argument substantially moot. Moreover, to the extent the argument is not moot, we have consistently held that Congress intended that the Commission would use its Section 309(f) authority to abridge the normal process of public notice and comment only in "rare" cases.⁴¹ PageNet has not established that this standard is met for paging applications generally. Consequently, we will continue to evaluate on a case-by-case basis whether any CMRS license applicant establishes that there are "extraordinary circumstances" where a delay in operations would seriously prejudice the public interest, such as to justify an STA.

G. 900 MHz Paging Build-Out Requirement

18. PageNet also contends that while cellular, SMR and PCS operators can license their systems on a wide-area basis upon grant of one initial application, 900 MHz paging operators must build-out their systems by separately licensing each and every transmitter of their system.⁴² Since the *CMRS Third Report and Order* was released, the Commission has eased the burden on paging operators by allowing them to consolidate their existing site-by-site licenses into one wide-area license.⁴³ Moreover, the

³⁶ 47 U.S.C. § 309(f). See 47 CFR § 22.125(b): "The FCC may grant STAs valid for a period not to exceed 180 days under the provisions of § 309(f) of the Communications Act of 1934, as amended, (47 U.S.C. § 309(f)) if extraordinary circumstances so require, and pending the filing of an application for regular operation. The FCC may grant extensions of STAs for a period of 180 days, but the applicant must show that extraordinary circumstances warrant such an extension."

³⁷ PageNet Petition at 8-9.

³⁸ *Id.* at 8.

³⁹ See *Paging Notice* and *Paging Second Report and Order*.

⁴⁰ See 929 and 931 MHz Paging Auction Closes: Winning Bidders of 985 Licenses Announced, *Public Notice*, DA 00-508 (March 6, 2000).

⁴¹ See *Tender Offers and Proxy Contests*, MM Docket No. 85-218, *Policy Statement*, FCC 86-67, 59 Rad. Reg. 2d (P&F) 1536, 1572 (1986), citing S. Rep. No. 690, 86th Cong., 1st Sess. 4 (1959); H.R. Rep. No. 1800, 2d Sess. 13 (1960). See also Revision of Part 21 of the Commission's Rules, CC Docket No. 86-128, *Report and Order*, 2 FCC Rcd 5713, 5721 (1987).

⁴² PageNet Petition at 3-4.

⁴³ See *Paging Second Report and Order* and *Paging Notice*.

Commission has established geographic area licensing procedures for all exclusive use paging channels. In light of the Commission's actions, petitioner's arguments are moot.

H. License Term; Renewal Expectancy

19. In the *CMRS Third Report and Order*, the Commission provided for renewal expectancies for all CMRS services, including Part 22 paging. PageNet contends, however, that the renewal expectancy language for Part 22 carriers other than cellular was not incorporated into the Part 22 rules. Since the petitions were filed, we have consolidated our renewal rules for all wireless carriers into Part 1 as part of the ULS proceeding. Because the Part 1 rule applies to all wireless services, including Part 22 paging, petitioner's arguments are moot.

I. Conformation of Power Levels

20. In the *CMRS Third Report and Order*, we retained different maximum power limitations for specific wireless services. We concluded that the general goal of regulatory parity did not require changing service-specific technical rules that responded to different conditions in each service, and that tinkering with these limits would not significantly benefit competition.⁴⁴ McCaw argues that this "lack of parity" must be removed because cellular licensees face constraints on their system design that are more extreme than those imposed on SMR and PCS operators. McCaw does not state anything in its petition that leads us to change the conclusions that we reached in the *CMRS Third Report and Order*.

IV. FINAL REGULATORY FLEXIBILITY CERTIFICATION

21. *Final Regulatory Flexibility Certification.* In this *Memorandum Opinion and Order on Reconsideration*, we amend Sections 90.425 and 90.647(d) of the Commission's rules as set forth in the Appendix. The amended rules clarify that all Part 90 CMRS providers licensed by geographic area are exempt from station identification requirements, and that other Part 90 CMRS providers need comply only with the streamlined station identification requirements of Section 90.425(e). Specifically, the amendments clarify that station identification need only occur once an hour instead of once every 15 minutes and that the affected CMRS providers need not comply with other detailed technical requirements. We therefore certify, pursuant to the Regulatory Flexibility Act,⁴⁵ that the rules adopted in this Order will not have a significant economic impact on a substantial number of small entities.

22. The Commission will send a copy of this *Memorandum Opinion and Order on Reconsideration*, including specifically a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the *Memorandum Opinion and Order on Reconsideration* and this certification will be sent to

⁴⁴ *CMRS Third Report and Order*, 9 FCC Red at 8012, ¶¶ 152-154.

⁴⁵ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. See 5 U.S.C. § 605(b).

V. ORDERING CLAUSES

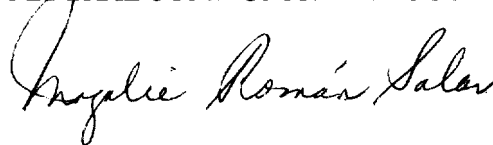
23. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(j), 332, and 405, and Section 1.429(i) of the Commission's rules, 47 C.F.R. § 1.429(i), that the petition for reconsideration or clarification filed by American Mobile Telecommunications Association, Inc. IS GRANTED to the extent that American Mobile Telecommunications Association, Inc. seeks clarification of Section 90.425 of the Commission's rules.

24. IT IS FURTHER ORDERED that in all other respects, the petitions for reconsideration and/or clarification of the *CMRS Third Report and Order* in GN Docket No. 93-252 discussed herein ARE DISMISSED to the extent they are identified herein as moot, and otherwise ARE DENIED.

25. IT IS FURTHER ORDERED that the rule changes specified in the Appendix, ARE ADOPTED.

26. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Memorandum Opinion and Order on Reconsideration*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX

Rule Amendments

47 CFR Part 90 is amended as follows:

Part 90 – Private Land Mobile Radio Services

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 251-2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251-2, 303, 309 and 332, unless otherwise noted.

2. Section 90.425 is amended by revising paragraphs (a) and (e)(1) to read as follows:

§ 90.425 Station identification.

(a) *Identification procedure.* Except as provided for in paragraphs (d) and (e) of this section, each station or system shall be identified by the transmission of the assigned call sign during each transmission or exchange of transmissions, or once each 15 minutes (30 minutes in the Public Safety Pool) during periods of continuous operation. The call sign shall be transmitted by voice in the English language or by International Morse Code in accordance with paragraph (b) of this section. If the station is employing either analog or digital voice scrambling, or non-voice emission, transmission of the required identification shall be in the unscrambled mode using A3E, F3E or G3E emission, or International Morse, with all encoding disabled. Permissible alternative identification procedures are as follows:

(e) ***

(1) Station identification will not be required for 929-930 MHz nationwide paging licensees or MTA or EA-based SMR licensees. All other CMRS stations will be required to comply with the station identification requirements of this paragraph.

3. Section 90.647 is amended by adding a paragraph (d) to read as follows:

§ 90.647 Station identification.

(d) Notwithstanding the requirements set forth in this paragraph, systems operated by geographic area CMRS licensees are subject only to the station identification requirements of Section 90.425(e).